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APPLICATION NO. FILING DATE FIRST NAMED INVENTOR ATTORNEY DOCKET NO. CONFIRMATION NO. 10/726,773 12/03/2003 Frank Braymand 1001-099 4207 25215 7590 03/28/2006 **EXAMINER** DOBRUSIN & THENNISCH PC SICONOLFI, ROBERT 29 W LAWRENCE ST ART UNIT PAPER NUMBER **SUITE 210** 

3683
DATE MAILED: 03/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Disposition of Claims  ### Disposition is placed and papers  ### Disposition of Claims  ### Dispos		Application No.	Applicant(s)		
Robert A. Siconolfi  - The MAILING DATE of this communication appears on the cover sheet with the correspondence address Period for Reply  A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.  - The Mailing of the properties of the profile device for reply is people of the profile of the communication.  - If NO period for reply is people above, the maintenant statutory period will apply and will easily stay (MONTHS from the maining date of this communication.  - If NO period for reply is people above, the maintenant statutory period will apply and will easily stay (MONTHS from the maining date of this communication.  - Failure to egipt with the stor reduced period for reply will be status and the superination to term abundance of SU S.C. § 133).  - Status  - The main adjustment. See 37 CPR 1,704(b) seemed petited from the communication, and petited from adjustment. See 37 CPR 1,704(b) seemed patient from the adjustment. See 37 CPR 1,704(b) seemed patient from adjustment. Seemed patient from adjustment f					
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WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.  Elementor of time raps be available under the provision of 3° CFR 1.3°B(a). In nevent, however, may a reply be timely filed after SX (6) MCNTIS from the mailing date of this communication.  Failus to reprove who the set or extended prend for reply will. by stakes, cause he application to become ABANDOED data U.S. (9.133). Any reply received by the Communication of the communicati					
1) ⊠ Responsive to communication(s) filed on 20 January 2006.  2a) ⊠ This action is FINAL. 2b) □ This action is non-final.  3) □ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213.  Disposition of Claims  4) ☑ Claim(s) 1.6-10 and 12-27 is/are pending in the application. 4a) Of the above claim(s) is/are withdrawn from consideration.  5) □ Claim(s) 1.6-10 and 12-27 is/are rejected.  7) □ Claim(s) is/are objected to.  8) □ Claim(s) is/are objected to.  8) □ Claim(s) is/are objected to.  8) □ Claim(s) is/are objected to by the Examiner.  10) □ The specification is objected to by the Examiner.  10) □ The drawing(s) filed on is/are: a) □ accepted or b) □ objected to by the Examiner.  Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  11) □ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.  Priority under 35 U.S.C. § 119  12) □ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  a) □ All b) □ Some * c) □ None of:  1.□ □ Certified copies of the priority documents have been received.  2.□ Certified copies of the priority documents have been received in Application No  3.□ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  *See the attached detailed Office action for a list of the certified copies not received.  Attachment(s)  10 □ Notice of Dratsperson's Patent Drawing Review (PTO-948) and Draw (PTO-152).	<ul> <li>WHICHEVER IS LONGER, FROM THE MAILING DA</li> <li>Extensions of time may be available under the provisions of 37 CFR 1.13 after SIX (6) MONTHS from the mailing date of this communication.</li> <li>If NO period for reply is specified above, the maximum statutory period w</li> <li>Failure to reply within the set or extended period for reply will, by statute, Any reply received by the Office later than three months after the mailing</li> </ul>	ATE OF THIS COMMUNICATION 36(a). In no event, however, may a reply be tim rill apply and will expire SIX (6) MONTHS from cause the application to become ABANDONE	I.  lely filed  the mailing date of this communi  (35 U.S.C. § 133).		
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a) All b) Some * c) None of:  1. Certified copies of the priority documents have been received.  2. Certified copies of the priority documents have been received in Application No  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  * See the attached detailed Office action for a list of the certified copies not received.  Attachment(s)    Notice of References Cited (PTO-892)	Priority under 35 U.S.C. § 119				
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3) Notice of Informal Patent Application (PTO-152)	1) Notice of References Cited (PTO-892)				
	3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)	5) Notice of Informal P			

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#### **DETAILED ACTION**

Amendment filed on 1/20/06 has been received. Information Disclosure
 Statement filed on 1/20/06 has been received.

#### **Double Patenting**

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 1, 6-10,12-27 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-30 of U.S. Patent No. 6,941,719. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claimed inventions overlap in scope and are not patentable distinct.

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### Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

- (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
- (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.
- 5. Claims 1,6-10,12-27 are rejected under 35 U.S.C. 102(e) as being anticipated by Busseuil et al (U. S. Patent no. 6,941,719).

Busseuil discloses an adhesive foam that foams in response to an e-coat or paint oven process (see column 2 line 28-32) and uses spacers (called locating lugs in the specification see column 3 line 49 to column 4 line 5) to allow anti-corrosive fluid to coat the surface.

6. Claims 1,6-10,12-27 are rejected under 35 U.S.C. 102(b) as being anticipated by Busseuil et al (U. S. Pub no. 2002/0174954).

Busseuil discloses an adhesive foam that foams in response to an e-coat or paint oven process (see paragraph 8) and uses spacers (called locating lugs in the specification see paragraph 15) to allow anti-corrosive fluid to coat the surface.

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## Response to Arguments

7. Applicant's arguments with respect to claims ,6-10,12-27 have been considered but are most in view of the new ground(s) of rejection.

8. Applicant's submission of an information disclosure statement under 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p) on 1/20/06 prompted the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE**FINAL. See MPEP § 609.04(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert A. Siconolfi whose telephone number is 571-272-7124. The examiner can normally be reached on M-F 10 am-3 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James McClellan can be reached on 571 272-6786. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Koln to fuerolf 3/23/00 Robert A. Siconolfi Primary Examiner Art Unit 3683